

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL OLIVER,

Plaintiff,

Case No. 20-cv-12711

vs.

Hon. Laurie J. Michelson

CITY OF DETROIT, et al.,

Defendants.

**AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN,
AND ROBERT WILLIAMS'S
MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF**

By this motion, the American Civil Liberties Union (“ACLU”), the American Civil Liberties Union of Michigan, and Robert Williams (collectively, “amici”) seek leave to file an amici curiae brief in support of Plaintiff Michael Oliver’s opposition to Defendants’ motion for summary judgment. In support of this motion, amici state as follows:

1. The ACLU is a nationwide, nonprofit, nonpartisan organization dedicated to the principles embodied in the United States Constitution and our nation’s civil rights laws. The ACLU of Michigan is a state affiliate of the ACLU. The ACLU has appeared before courts throughout the country in cases involving the dangers posed by unfettered police use of emerging technologies, including facial

recognition technology (“FRT”) and other biometric technologies. *See, e.g., Lynch v. State*, No. SC19-298, 2019 WL 3249799 (Fla. 2019) (amicus brief addressing government’s obligation to disclose information about FRT use to criminal defendants); *State v. Arteaga*, No. A-003078-21T1 (N.J. App. Div., oral argument scheduled for May 15, 2022) (same); *Johnson v. VanderKooi*, 983 N.W.2d 779 (Mich. 2022) (counsel in case holding that fingerprinting people during *Terry* stops on the street is a Fourth Amendment search requiring a warrant); *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (counsel in case establishing that law enforcement request for historical cell phone location information is a search requiring a warrant). Attorneys associated with the ACLU and ACLU of Michigan represent Robert Williams in *Williams v. City of Detroit, et al.*, No. 2:21-cv-10827-LJM-DRG (E.D. Mich.), currently pending before this Court, alleging that the misuse of facial recognition technology led to his wrongful arrest.

2. Mr. Williams, a husband and father of two young girls, was arrested in January 2020 based on misidentifications by flawed facial recognition technology and by a non-eyewitness in a grossly unreliable photo lineup. His lawsuit against Detective Donald Bussa and the City of Detroit is currently in discovery, with dispositive motions due in October 2023. Mr. Williams’s experience is strikingly similar to Mr. Oliver’s: both are Black men who were wrongly accused of and arrested for a crime they did not commit because of the same Detroit Police

Department (“DPD”) detective’s reliance on incorrect “matches” by facial recognition algorithms. Because of the similarities between Mr. Williams’s and Mr. Oliver’s cases, Mr. Williams has an interest in ensuring that the Court’s resolution of this case does not prejudice resolution of his suit.

3. This case raises important issues surrounding police reliance on flawed facial recognition technology in investigations. This case and *Williams* will likely yield the first judicial opinions addressing some of the questions raised here relating to FRT, and the Court’s decision could affect the lives of countless individuals.

4. In their proposed brief, amici provide additional information about risks of police use of FRT and ways in which FRT use taints the reliability of subsequent photographic lineups, which bolsters Plaintiff’s argument that the record in this case presents genuine issues of material fact that should prompt the Court to deny Defendants’ motion for summary judgment. Amici also explain the facts that have been developed in the *Williams* case, which may further inform the Court’s decision in this case.

5. As described in the proposed brief, the record in *Williams* will show numerous similarities between the unconstitutional conduct in this case and in *Williams*, including significant errors in Detective Bussa’s investigation and the omission of material exculpatory information from the warrant application, resulting in a wrongful arrest. The record in *Williams* also will demonstrate deficient or absent

policies and failure to train on a number of areas critical to the investigative failures in both *Oliver* and *Williams*, which supports the municipal liability claims in both cases. Not only did the Detroit Police Department fail to train detectives like Detective Bussa on FRT, but it required absolutely no training on *any topic* upon a patrol officer's promotion to detective. That means that in the investigations underlying both this case and *Williams*, Detective Bussa was untrained on FRT, algorithmic bias, photo lineup procedures, how to establish probable cause, the obligation to include exculpatory information in warrant requests, and more. As the proposed brief explains, that lack of training contributed to the unconstitutional conduct in both cases.

6. Amici believe the information and argument in their proposed brief will aid the Court by providing additional context surrounding the record developed in *Oliver* and the arguments advanced in Plaintiff's brief. *See* ECF No. 49.

7. As required by Local Rule 7.1(a), before filing this motion undersigned counsel contacted counsel for Defendants and counsel for Mr. Oliver via email on April 26, 2023, to seek their concurrence. Counsel for Mr. Oliver consents to the filing of this brief. Counsel for Defendants has not responded as of the filing of this motion. In the interest of avoiding delay in light of the briefing schedule in this case, undersigned counsel is filing this motion now.

For these reasons, amici seek leave to file an amici curiae brief, and request that the Court accept the accompanying brief as filed.

Dated: April 28, 2023

Respectfully submitted,

/s/Ramis J. Wadood

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